

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS**

IN RE MASSACHUSETTS DIET DRUG LITIGATION

Andrus, et al. v. Indevus Pharmaceuticals, Inc., et al.

Civil Action No. 04-10911 GAO

Susan E. Willette; Laura Belles and Jeff Belles; David M. Cohen and Shirley Cohen; Jan Courier; Ricardo Guzman; Debra A. King and Robert E. King; Maria M. Laessig and Robert E. Laessing; Helen Cruz Madla; Maryann McGovran and Harley Duane McGovran; H. Kenneth Roseberry, Jr. and Kristina Roseberry; Jerry E. Smith; Diana Lynn Spector and James R. Spector, II; Yvonne K. Stankey; Ronald A. Waller and Harriet Waller; Susan R. Weiszbrod; Connie L. Weygandt; and Beverly McDuffie Whitaker,

Plaintiffs.

v.

Indevus Pharmaceuticals, Inc., F/K/A Interneuron Pharmaceuticals, Inc.; Wyeth, Inc., F/K/A American Home Products Corporation; Wyeth Pharmaceuticals, Inc F/K/A Wyeth-Ayerst Pharmaceuticals, Inc., A Division Of American Home Products Corporation; and Boehringer Ingelheim Pharmaceuticals, Inc.; and James A. Edmondson; Linda L. Gonzales (a/k/a Linda L. McElroy); Arturo I. Gonzalez; Andrew D. Morton; Patricia M. Ulrich; Christine K. Wagner; Mark A. Conrad; Mae O. Hence; Dennis L. Westfall; Elutherio Farias; Virginia F. Riley; Jennifer J. Froelich; Michael Topalian; Donna M. Williams; Lisa Elek; Joseph Potter, III; Karen L. Symon; Don LeCocke; Richard E. Martinez; Alberto Rodriguez, I; Debbie K. Anderes; Michael B. Barks; David P. Cauwels; Thomas Meehan; David R. Mrosko; Patricia M. Tessendore; Michael T. Matanguihan; Charles J. Reinert; Kimberle Karen Maddox; Marjorie T. Rylee; Daniel B. Burke; Dean L. Marusak; A. Durwood Neie; Joseph Boswell; James V. Nash; Lisa Sabbagh; Gina M. Sanders; Gregory Garner; Jennifer L. Koelz; Rodney D. Miller; David E. Anderson; Mark D. Cook; Bruce R. Stewart; Paul D. Bowers; Dwane Lyle Hanson; Shanna Midland; David J. Schade; Anthony J. Cain; and John Doe,

Defendants.

**PLAINTIFFS'
MOTION TO
REMAND**

**Civil Action No.
04-11429-GAO**

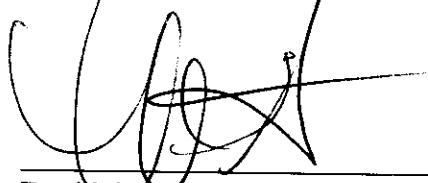
PLAINTIFFS' MOTION TO REMAND

Pursuant to 28 U.S.C. § 1447(c), plaintiffs hereby seek to remand this action to the Superior Court of the Commonwealth of Massachusetts, Middlesex County. As grounds for this motion, plaintiffs state that the ground asserted for removal by defendants Wyeth, Inc. f/k/a American Home Products Corporation; and Wyeth Pharmaceuticals, Inc. f/k/a Wyeth-Ayerst Pharmaceuticals, Inc., a Division of American Home Products Corporation (collectively referred to as "Wyeth"), is improper.

More specifically, defendant, Indevus Pharmaceuticals, Inc. f/k/a Interneuron Pharmaceuticals, Inc. ("Indevus"), is a resident of Massachusetts and has not been fraudulently joined. Wyeth cannot meet the high burden for fraudulent joinder as the allegations in the complaint show that plaintiffs have far more than a colorable claims against Indevus.

In support of their motion, plaintiffs have filed a memorandum. In the event that their motion is granted, plaintiffs request that this Court issue an order requiring that the removing defendants pay plaintiffs' just costs and any actual expenses, including attorneys fees, incurred as a result of the removal.

THE PLAINTIFFS,
BY THEIR ATTORNEYS,



David C. Strouss, (BBO # 546253)

Marilyn T. McGoldrick, (BBO # 561766)

THORNTON & NAUMES, LLP

100 Summer Street, 30th Fl.

Boston, MA 02110

(617) 720-1333

Ellen A. Presby (Texas State Bar # 16249600)

Amy M. Carter (Texas State Bar # 24004580)

Amy J. Shahan (Texas State Bar # 00797564)

Jory D. Lange, Jr. (Texas State Bar # 24041294)

BARON & BUDD, A PROFESSIONAL CORPORATION

3102 Oak Lawn Avenue, Suite 1100

Dallas, Texas 75219

(214) 521-3605

DATED: July 23, 2004.

CERTIFICATE OF SERVICE

This is to certify that I have this day served Plaintiffs' Motion for Remand and Plaintiffs' Memorandum in Support of Their Motion for Remand upon all parties to the above-captioned action by first class, postage prepaid mail to the following:

Matthew J. Matule
Skadden, Arps, Slate, Meagher & Flom, LLP
One Beacon Street
Boston, MA 02108

Counsel for Indevus Pharmaceuticals, Inc.
and Boehringer Ingelheim Pharmaceuticals, Inc.

Michael D. Birnbaum
Skadden, Arps, Slate, Meagher & Flom, LLP
Four Times Square
New York, NY 10036

Counsel for Indevus Pharmaceuticals, Inc.
and Boehringer Ingelheim Pharmaceuticals, Inc.

William A. McCormack
Janice Howe
David Yamin
Bingham McCutchen, LLP
150 Federal Street
Boston, MA 02110-1726

Counsel for Defendants Wyeth and
Wyeth Pharmaceuticals, Inc.

COURTESY COPY SERVED ON:

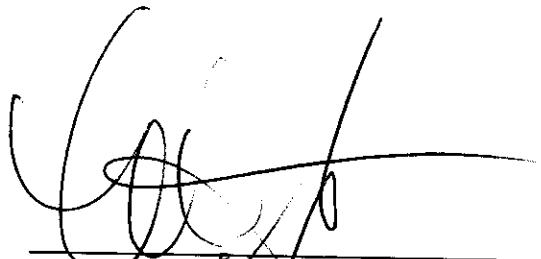
Edward J. Barshak
Michael S. Appel
Sugarman, Rogers, Barshak, & Cohen, P.C.
101 Merrimac Street, 9th Floor
Boston, MA 02114

Michael P. Friedman
Brickley, Sears, & Sorett, P.A.
75 Federal Street
Boston, MA 02110

Dante G. Mummolo
Iannella and Mummolo
One Boston Place, Suite 3615
Boston, MA 02108

Michael R. Hugo
Lopez, Hodes, Restaino, Milman & Skikos
95 Commercial Wharf
Boston, MA 02110

This 23rd day of July, 2004.



David C. Strouss, (BBO # 546253)
Marilyn T. McGoldrick, (BBO # 561766)
Thornton & Naumes, LLP
100 Summer Street, 30th Floor
Boston, MA 02110

Ellen A. Presby, (Texas State Bar # 16249600)
Amy M. Carter, (Texas State Bar # 24004580)
Amy J. Shahan, (Texas State Bar # 00797564)
Jory D. Lange, Jr., (Texas State Bar # 24041294)
Baron & Budd, P.C.
3102 Oak Lawn Avenue
Dallas, TX 75219